

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION**

EVA MARIE YEE, on behalf of herself
and those similarly situated,

Plaintiff,

v.

ASSURANCE IQ, LLC.,

Defendant.

Case No. 2:19-cv-02010

CLASS ACTION COMPLAINT

**VIOLATIONS OF THE TELEPHONE
CONSUMER PROTECTION ACT OF
1991, 47 U.S.C § 227**

DEMAND FOR JURY TRIAL

NATURE OF THIS ACTION

1. Eva Marie Yee (“Ms. Yee” or “Plaintiff”) individually and on behalf of the proposed Class defined below, brings this class action lawsuit for damages resulting from the unlawful actions of Defendant Assurance IQ, LLC. (“Assurance” or “Defendant”). Assurance negligently, knowingly, and/or willfully placed unsolicited automated text messages to Plaintiff’s cellular phone in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the “TCPA”). Plaintiff alleges as follows upon personal knowledge as to herself and her own experiences and, as to all other matters, upon information and belief including due investigation conducted by her attorneys.

14. Congress also specifically found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call [...]” *Id.* At §§ 12-13; *see also, Mims*, 132 S. Ct. at 744.

15. As Judge Easterbrook of the Seventh Circuit explained in a TCPA case regarding calls to a non-debtor similar to this one:

The Telephone Consumer Protection Act [...] is well known for its provisions limiting junk-fax transmissions. A less litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered – and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

16. The TCPA makes it “unlawful for any person within the United States . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call . . .” 47 U.S.C. § 227(b)(1)(A)(iii).

17. Text messages are calls and are subject to the TCPA. *See, e.g., Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 666 (2016); *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 954 (9th Cir. 2009).

18. 47 C.F.R. § 64.1200(a)(2) additionally states, with respect to advertisement and telemarketing calls—of which Defendant’s texts to Plaintiff are—that “[n]o person or entity may . . . [i]nitiate or cause to be initiated, any telephone call that includes or introduces an advertisement or constitutes telemarketing, using an automatic telephone dialing system or an

1 artificial or prerecorded voice, to any of the lines or telephone numbers described in paragraphs
2 (a)(1)(i) through (iii) of this section, other than a call made with the prior express written consent
3 of the called party”

4 19. 47 C.F.R. § 64.1200(f)(8) defines “prior express written consent” as “an
5 agreement, in writing, bearing the signature of the person called that clearly authorizes the seller
6 to deliver or cause to be delivered to the person called advertisements or telemarketing messages
7 using an automatic telephone dialing system or an artificial or prerecorded voice, and the
8 telephone number to which the signatory authorizes such advertisements or telemarketing
9 messages to be delivered.”

10 20. To state a claim for a violation of the TCPA, a plaintiff must only show that he or
11 she received a call made using an ATDS or featuring a prerecorded voice; consent is an
12 affirmative defense to liability under the TCPA. *See Meyer v. Portfolio Recovery Assocs., LLC*,
13 707 F.3d 1036, 1042 (9th Cir. 2012) (finding Defendant “did not show a single instance where
14 express consent was given before the call was placed.”)

15 21. The TCPA provides for damages in the amount of \$500 for each negligent
16 violation and \$1,500 for each knowing violation. *See* 47 U.S.C. § 227(b)(3).

17 **FACTUAL ALLEGATIONS**

18 22. Plaintiff is, and has been at all times relevant to this action, the regular and sole
19 user of her cellular telephone number—(602) 461-XXXX.

20 //

21 //

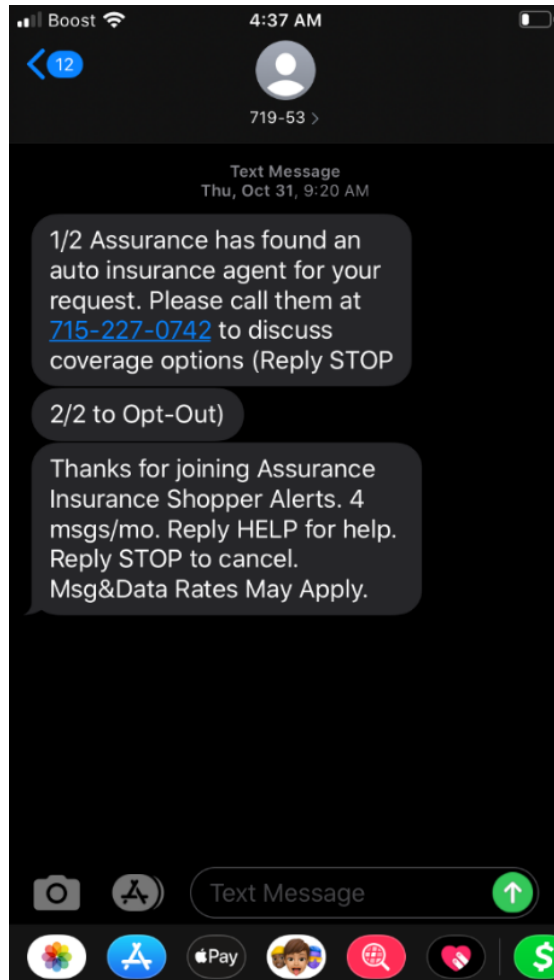
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23. On or about October 31, 2019, at approximately 9:20AM, Assurance sent Plaintiff two automated text messages to Plaintiff's cellular telephone number. A true and correct copy of the October 31, 2019 text messages sent by Assurance are reproduced below:



24. The short code that Defendant used to send the automated text message at issue to Plaintiff—719-53—is used by Assurance to send automated text marketing messages.

25. In its Terms and Conditions, Assurance encourages consumers to use the same short code—719-53—to receive text communications related to “Shopper Alerts” and other marketing messages.¹

¹ <https://www.assurance.com/terms-and-conditions> (last visited December 3, 2019).

26. “A short code is a number with fewer digits than a phone number to which a text message can be sent. The five-or six-digit numbers are often promoted in traditional and digital advertising. Companies use these codes to bring customers into the branded experience through voting, surveys, sweepstakes, coupon offers, information updates, loyalty programs and alerts.”²

27. “A dedicated short code is an SMS short code that is used and paid for exclusively by one brand. A dedicated short code is different from a shared short code, because a shared short code is used and paid for by multiple brands.”³

28. “A vanity short code, is a 5-6 digit phone number that is specifically selected by a brand, rather than selected at random by the Common Short Code Administration (CSCA).”⁴

29. Plaintiff did not give Defendant prior express written consent to send text messages to her cellular telephone number by using an automatic telephone dialing system.

30. Consumers across the country have found themselves inundated with Defendant’s unauthorized automated calls and texts, with consumers airing their grievances on the Better Business Bureau website, as highlighted below:

- I started receiving phone calls from this company 11/5/19. I got 3 calls by 8:35am. When I would talk to an agent they would promptly hang up once I ask any questions regarding the company or why they were calling . . . They are harassing me so bad I am considering changing my phone number and have turned my phone off all day which is a major security issue for a female living alone.⁵

² <https://usshortcodes.com/faqs> (last visited December 1, 2019).

³ <https://usshortcodedirectory.com/faq/what-is-a-dedicated-short-code/> (last visited December 1, 2019).

⁴ <https://usshortcodedirectory.com/faq/what-is-a-vanity-short-code/> (last visited December 1, 2019).

⁵See, e.g. <https://www.bbb.org/us/wa/bellevue/profile/insurance-companies/assurance-1296-1000021736/complaints> (last visited December 3, 2019).

- 1 • I did not sign up for health insurance quotes. Someone erroneously provided this
2 company with my phone number and I have been inundated with spam calls and
3 text messages from this company on a daily basis. I regularly receive 10-20 calls
4 per day from this company looking for persons other than myself. I have told
5 them on multiple occasions that they have the wrong number and have requested
6 that they stop calling but they refuse. When I block the numbers that this
7 company calls me from, they call me from other numbers. It is harassment and
8 incessant.⁶
- 9 • Over the span of 8 minutes, I was called 8 times and texted 2 times by this
10 company claiming I reached out to them about health insurance. I did not! I
11 responded to the text stating to not contact me again and that I did not request
12 anyone to contact me. When I picked up and asked for them to stop calling me,
13 the person would just hang up the phone. This is absolutely ridiculous both
14 because I do not want to be harassed by this company and because this was all
15 occurring at 8:34pm-8:42pm. Then this morning I received another call from
16 them. What's crazy is that I would block each phone number and they would just
17 call me with a different number within a minute.⁷

18
19 31. The text messages Assurance sent to Plaintiff and the purported class members
20 consisted of pre-written templates of impersonal text, and were identical to text messages
21 Defendant sent to other consumers.

22 32. In addition, upon information and belief, the content of the text messages were
23 automatically generated, with no human involvement in the drafting or directing of the messages.

24
25 ⁶ *Id.*

26 ⁷ *Id.*

1 *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1547 (2016); *Lujan v. Defenders of Wildlife*, 504 U.S.
2 555, 560 (1992).

3 ***The “Injury in Fact” Prong***

4 42. Plaintiff’s injury in fact must be both “concrete” and “particularized” in order to
5 satisfy the requirements of Article III of the Constitution, as articulated in *Spokeo*. *Spokeo*, 136
6 S.Ct. at 1547.

7 43. For an injury to be “concrete” it must be a *de facto* injury, meaning that it actually
8 exists. *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012). In this case,
9 Defendant sent multiple text messages to Plaintiff’s cellular telephone, using an ATDS. Such
10 text messages are a nuisance, an invasion of privacy, and an expense to Plaintiff. All three of
11 these injuries are concrete and *de facto*.

12 44. For an injury to be “particularized” means the injury must “affect the Plaintiff in a
13 personal and individual way.” *Spokeo, Inc.*, 136 S.Ct. at 1543. In this case, Defendant invaded
14 Plaintiff’s privacy and peace by texting her cellular telephone, and did this with the use of an
15 ATDS. Furthermore, Plaintiff was distracted and annoyed by having to take time, opening and
16 reading the text messages. All of these injuries are particularized and specific to Plaintiff, and
17 will be the same injuries suffered by each member of the putative class.

18 ***The “Traceable to the Conduct of Defendant” Prong***

19 45. The second prong required to establish standing at the pleadings phase is that
20 Plaintiff must allege facts to show that its injuries are traceable to the conduct of Defendant.

21 46. The above text messages were directly and explicitly linked to Defendant.
22 Defendant’s text message identified the Defendant as “Assurance,” the party that attempted to
23 solicit business from Plaintiff. This text message is the sole source of Plaintiff’s and the Class’s
24 injuries. Therefore, Plaintiff has illustrated facts that show her injuries are traceable to the
25 conduct of Defendant.

The “Injury is Likely to be Redressed by a Favorable Judicial Opinion” Prong

47. The third prong to establish standing at the pleadings phase requires Plaintiff to allege facts to show the injury is likely to be redressed by a favorable judicial opinion.

48. In the present case, Plaintiff’s Prayers for Relief include a request for damages for each text message Defendant sent, as authorized by statute in 47 U.S.C. § 227. The statutory damages were set by Congress and specifically redress the financial damages suffered by Plaintiff and the members of the putative class.

49. Because all standing requirements of Article III of the U.S. Constitution have been met, Plaintiff has standing to sue Defendant on the stated claims.

CLASS ACTION ALLEGATIONS

50. Plaintiff brings this action under Federal Rule of Civil Procedure 23, and as a representative of the following class:

All persons throughout the United States (1) to whom Defendant delivered, or caused to be delivered, a text message, (2) directed to a number assigned to a cellular telephone service, (3) by using an automatic telephone dialing system, (4) within four years preceding the date of this complaint through the date of class certification, and for whom (5) Defendant did not claim to have obtained prior express written consent, or claim to have obtained prior express written consent in the same manner they claim to have obtained prior express written consent from Plaintiff.

51. Excluded from the class are Defendant, its officers and directors, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendant has or had a controlling interest.

52. Plaintiff reserves the right to redefine the class and to add subclasses as appropriate based on discovery and specific theories of liability.

1 53. Numerosity: Upon information and belief, the members of the class are so
2 numerous that joinder of all of them is impracticable.

3 54. The exact number of the members of the class is unknown to Plaintiff at this time,
4 and can (and will) be determined through appropriate discovery. However, given that, on
5 information and belief, Defendant texted thousands of class members nationwide during the class
6 period, it is reasonable to presume that the members of the Class are so numerous that joinder of
7 all members is impracticable. The disposition of the claims in a class action will provide
8 substantial benefits to the parties and the Court.

9 55. Ascertainability: The members of the class are ascertainable because the class is
10 defined by reference to objective criteria.

11 56. In addition, the members of the class are identifiable in that, upon information and
12 belief, their cellular telephone numbers, names and addresses can be identified in business
13 records maintained by Defendant and by third parties.

14 57. Typicality: Plaintiff's claims are typical of the claims of the members of the class.
15 Plaintiff has had to suffer the burden of receiving text messages to her cellular telephone from an
16 ATDS. Thus her injuries are typical to Class Members. As it did for all members of the class,
17 Defendant used an ATDS to deliver text messages to Plaintiff's cellular telephone number.

18 58. Plaintiff's claims, and the claims of the members of the class, originate from the
19 same conduct, practice and procedure on the part of Defendant.

20 59. Plaintiff's claims are based on the same theories, as are the claims of the members
21 of the class.

22 60. Plaintiff and Class Members were harmed by the acts of Defendant in at least the
23 following ways: Defendant harassed Plaintiff and Class Members by illegally texting their
24 cellular phones using an ATDS. Plaintiff and the Class were damaged thereby.

61. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the interests of the members of the class with whom she is similarly situated, as demonstrated herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationships, conflicts, or differences with any Class Member.

62. Plaintiff's interests in this matter are not directly or irrevocably antagonistic to the interests of the members of the class.

63. Plaintiff will vigorously pursue the claims of the members of the class.

64. Plaintiff has retained counsel experienced and competent in class action litigation. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. In addition, the proposed class counsel is experienced in handling claims involving consumer actions and violations of the TCPA.

65. Plaintiff's counsel will vigorously pursue this matter.

66. Plaintiff's counsel will assert, protect and otherwise represent the members of the class.

67. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be, necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

68. Predominance: The questions of law and fact common to the members of the class predominate over questions that may affect individual members of the class. The elements of the legal claims brought by Plaintiff and Class Members are capable of proof at trial through evidence that is common to the Class rather than individual to its members.

69. Commonality: There are common questions of law and fact as to all members of the Class, including but not limited to the following:

- a. What are Defendant's conduct, pattern, and practice as they pertain to delivering advertisement and telemarketing text messages;

- 1 b. Whether, within the statutory period, Defendant used an ATDS as defined
2 by the TCPA to send text messages to Class Members;
3 c. Whether Defendant's conduct violated the TCPA;
4 d. Whether Defendant should be enjoined from engaging in such conduct in
5 the future; and
6 e. The availability of statutory penalties.

7 70. Superiority: A class action is superior to all other available methods for the fair
8 and efficient adjudication of this matter because:

- 9 • If brought and prosecuted individually, the claims of the members of the class
10 would require proof of the same material and substantive facts.
11 • The pursuit of separate actions by individual members of the class would, as a
12 practical matter, be dispositive of the interests of other members of the class, and
13 could substantially impair or impede their ability to protect their interests.
14 • The pursuit of separate actions by individual members of the class could create a
15 risk of inconsistent or varying adjudications, which might establish incompatible
16 standards of conduct for Defendant.
17 • These varying adjudications and incompatible standards of conduct, in connection
18 with presentation of the same essential facts, proof, and legal theories, could also
19 create and allow the existence of inconsistent and incompatible rights within the
20 class.
21 • The damages suffered by each individual member of the class may be relatively
22 modest, thus, the expense and burden to litigate each of their claims individually
23 make it difficult for the members of the class to redress the wrongs done to them.
24
25
26

- Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law.
- The pursuit of Plaintiff's claims, and the claims of the members of the class, in one forum will achieve efficiency and promote judicial economy.
- There will be little difficulty in the management of this action as a class action.

71. Defendant has acted or refused to act on grounds generally applicable to the members of the class, making final declaratory or injunctive relief appropriate.

72. Plaintiff and the Class Members have all suffered and will continue to suffer harm and damages as a result of Defendant's unlawful conduct.

73. This suit seeks only damages and injunctive relief for recovery of economic injury on behalf of Class Members and it expressly is not intended to request any recovery for personal injury and claims related thereto.

COUNT I

Violations of the Telephone Consumer Protection Act 47 U.S.C. § 227(b)(1)(A)(iii) (On behalf of Plaintiff and the TCPA Class)

74. Plaintiff incorporates herein all preceding factual allegations.

75. Defendant and/or its agents placed unsolicited text messages to Plaintiff and the other members of the TCPA Class using an ATDS.

76. Defendant made these text messages *en masse* without the consent of Plaintiff and the other members of the TCPA Class.

77. Defendant's conduct was negligent, or willful or knowing.

78. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1). As a result of Defendant's conduct, Plaintiff and the other members of the TCPA Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- ## COMPLAINT

- 1 g) Awarding Plaintiff and the members of the class treble damages under 47 U.S.C.
2 § 227(b)(3)(C);
3 h) Awarding Plaintiff and the class reasonable attorneys' fees, costs, and expenses
4 under Rule 23 of the Federal Rules of Civil Procedure;
5 i) Awarding Plaintiff and the members of the class any pre-judgment and post-
6 judgment interest as may be allowed under the law; and
7 j) Awarding such other and further relief as the Court may deem just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any
10 and all triable issues.

11 Date: December 9, 2019

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